

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America,

Plaintiff,

vs.

Case No. 1:21-cr-00130

Jacob Bradley Demarais,

Defendant.

ORDER GRANTING MOTION TO AMEND JUDGMENT

[¶1] THIS MATTER comes before the Court on a Motion to Correct/Amend Judgment filed by the United States on March 14, 2023. Doc. No. 66. The United States requests the Court to amend the Judgment to reduce restitution imposed for the PinkHeartSisters series to \$3,000 for the victim known as “Tori” only and impose restitution in the sum of \$3,000 to the victim in the Tara Series. The Defendant has not filed a Response.

[¶2] On March 9, 2023, Defendant Jacob Bradley Demarais was sentenced after pleading guilty to one count of Distribution of Images Depicting the Sexual Exploitation of Children in violation of 18 U.S.C. §§ 2252(a)(2) and 2252(b)(1). Prior to sentencing, the United States filed a Sentencing Memorandum and Sealed Supplement requesting restitution under 18 U.S.C. § 2259 for several victims including the victims in the PinkHeartSisters2 (“Tori”) and Tara series. Doc. No. 54, pp. 4, 9-10. The United States noted in its Sealed Supplement that Defendant did not possess images for the victim known as “Erika” in the PinkHeartSisters series, therefore, it was not seeking restitution on her behalf. Doc. No. 54, n. 2. The Presentence Investigation Report (“PSR”) was

filed on February 24, 2023. Doc. No. 44. The PSR referenced the PinkHeartSisters series but did not include the Tara series. Id. at 4-5.

[¶3] Rule 36 permits a court, “at any time,” to “correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.” Fed. R. Crim. P. 36. A correction of a clerical error occurs when the modification of a judgment “neither affects a party's substantive rights nor contradicts the court's and the parties’ intentions as to the judgment.” United States v. Crawley, 463 Fed. App’x 418, 421 (5th Cir. 2012). If a correction to a restitution order does not increase the total amount of restitution imposed at sentencing, the defendant's rights are not substantively affected. See id. at 422 (holding that where corrected judgments did not increase amount of restitution defendant owed, defendant's “sentence remained unchanged [and] her substantive rights were not affected”); United States v. Portillo, 363 F.3d 1161, 1165 (11th Cir. 2004) (holding that an amendment to a restitution order that does not alter the total restitution amount constitutes a “clerical” correction). Thus, if a correction to a restitution order merely changes the identity of the restitution recipients or the allocations owed to such recipients and does not increase the total amount of restitution owed, Rule 36 is the appropriate mechanism for making the correction. See Crawley, 463 Fed. App’x at 420, 422; Portillo, 363 F.3d at 1165.

[¶4] The Judgment filed on March 10, 2023, correctly reflected restitution for 12 victims totaling \$36,000.00. Doc. No. 64, p. 7. However, the Judgment incorrectly included “Erika” as a victim in the PinkHeartSisters series and failed to include the victim in the “Tara” series. The proposed amendment by the United States merely reallocates the amount of restitution to be paid and does not increase the total amount of restitution ordered.

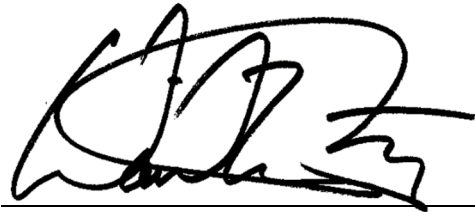
[¶5] Accordingly, the Court **GRANTS** the United States’ Motion. The Clerk of Court is directed to prepare an Amended Judgment to include:

- (1) Restitution to the victim of the “Tara” series in the amount of \$3,000;
- (2) Reduce restitution to the victims of “PinkHeartSisters” series to \$3,000 for the victim known as “Tori” only; and
- (3) Remove “Erika” as a victim in the “PinkHeartSisters” series.

[¶6] The United States is directed to provide the victim’s address of the “Tara” series directly to the Clerk of Court.

[¶7] **IT IS SO ORDERED.**

DATED March 27, 2023.

A handwritten signature in black ink, appearing to read 'D. Traynor', written over a horizontal line.

Daniel M. Traynor, District Judge
United States District Court